

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>12-O-16466-LMA</b>
	)	
<b>ALFRED WALTER DRISCOL III,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 60996,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Alfred Walter Driscoll III (respondent) was charged with four counts of misconduct stemming from one client matter, and one count of failing to update his membership records address. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on December 18, 1974, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On January 23, 2013, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, to his membership records address.<sup>3</sup> The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent failed to file a response to the NDC. On February 20, 2013, the State Bar properly served a motion for entry of default on respondent by certified mail, return receipt requested, to his membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment.

Respondent had actual notice of this proceeding. On February 21, 2013, respondent acknowledged receipt of the NDC and stated that he would not contest the charges.

As respondent did not file a response to the motion, his default was entered on March 8, 2013. The order entering the default was properly served on respondent at his membership

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<sup>3</sup> Although respondent's last name on the declaration of service was spelled "Driscoll" rather than "Driscol," this error is de minimis, and the court finds service of the NDC was proper.

records address by certified mail, return receipt requested.<sup>4</sup> The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On September 11, 2013, the State Bar properly served the petition for disbarment on respondent by first-class mail and by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) respondent has not contacted the State Bar since he acknowledged receipt of the NDC on February 21, 2013;<sup>5</sup> (2) there are 13 investigations pending against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on October 8, 2013.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

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<sup>4</sup> The return receipt for the order entering default was returned to the State Bar indicating that it was delivered on March 11, 2013, and received by "C. Hamblin."

<sup>5</sup> Therefore, respondent has not contacted the State Bar since his default was entered.

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Count One – Respondent willfully violated section 6106 of the Business and Professions Code<sup>6</sup> (moral turpitude), by misappropriating \$87,534.00 in client funds from his client trust account.

Count Two – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust account), by failing to maintain the full amount of his clients' funds in his client trust account until he made disbursements for his clients' benefit.

Count Three - Respondent willfully violated section 6106 of the Business and Professions Code by misrepresenting to his clients that the funds in the client trust account were still available for their use when respondent had already misappropriated the funds, and by falsely informing his clients that he had submitted his resignation to the State Bar, when he had never resigned from the State Bar.

Count Four - Respondent willfully violated section 6068, subdivision (j) (failure to update membership records address), by failing to timely update his State Bar membership records address even though he no longer maintained an office at his membership records address.

Count Five - Respondent willfully violated section 6068, subdivision (i) of the Business and Professions Code (failure to cooperate), by failing to provide a written response to the State Bar investigator's letter or email.

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<sup>6</sup> Unless otherwise indicated, all further references to section(s) refer to the provisions of the Business and Professions Code.

## **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding, as he confirmed receipt of the NDC;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

## **RECOMMENDATION**

### **Disbarment**

The court recommends that respondent Alfred Walter Driscoll III be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

### **California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

### **Restitution**

The court recommends that Respondent be ordered to make restitution to Larry and Sheila Etter in the amount of \$87,534.00, plus 10 percent interest per year from November 28,

2008. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Alfred Walter Driscoll III, State Bar number 60996, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: December \_\_\_\_, 2013

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LUCY ARMENDARIZ  
Judge of the State Bar Court